At a stated term of the Circuit Court of the United States for the Southern District of New York, held at the City of New York, on the 28th day of January, 1898.

Present: Hon. Hoyt H. Wheeler, Judge.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOB, RUDOLPH Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis, defendants.

The argument of the demurrer to the complaint herein coming on to be heard, and plaintiffs appearing by Henry L. Burnett, esq., United States attorney for the Southern District of New York, and Max J. Kohler, esq., assistant U. S. attorney, and defendants by W. Wickham Smith, esq.

11 Now, on motion of Henry L. Burnett, United States attorney, the defendants not opposing, it is

Ordered, that the complaint herein be amended, by substituting therefor the complaint set up in Exhibit A, hereto annexed and made a part hereof.

HOYT H. WHEELER, *Judge.*

Entry of within order consented to.

CURIE, SMITH & MACKIE,
Attorneys for Defendants.

EXHIBIT A.

Circuit Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOB, RUDOLPH Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis.

The plaintiffs, by Henry L. Burnett, attorney of the United States in and for the Southern District of New York, complain of the defendants and allege upon information and belief:

I. That at the time hereinafter mentioned the defendants
12 Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Deuss were copartners in business in the city of New York under the firm name of Dieckerhoff, Raffloer & Company.

II. That on or about the 21st day of December, 1896, the defendants Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Deuss, in their said firm name, as principals, and the defendants Carl F. Boker and John Achelis, as sureties, signed, sealed, and executed, and delivered unto the plaintiffs their certain bond or writing, obligatory of which the following is a copy:

"Bond for six months, to cover the delivery of unexamined packages.

"Know all men by these presents, that we, Dieckerhoff, Raffloer & Co., as principals, and John Achelis and Carl F. Boker, as sureties, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents, as witness our hands and seals this twenty-first day of December, eighteen hundred and ninety-six.

"The condition of this obligation is such that if each and every package or packages of each and every importation made by the said principals at any time within six months from and after the date of these presents, and delivered from the custody of the officers of the customs, in pursuance of section 2899, Revised Statutes of the United States, shall, within ten days after the package or packages designated by the collector and sent to the public store to be opened and examined have been
13 appraised and reported to him, be returned to the order of the collector without having been opened except with the consent of the collector or surveyor, given in writing, and then in the presence of one of the officers of the customs; or if the above-bounded obligors shall, in lieu of such return, pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise not so returned, then this obligation is to be void, otherwise to remain in full force and virtue.

"And the above-bounden obligors do, for themselves, their heirs, executors, administrators, and assigns, jointly and severally covenant and agree with the United States that the collector of customs aforesaid shall endorse on this bond the estimated value of each importation as made, and the date thereof, and that the penalty of this bond shall be held to be double the value of each importation as made and endorsed as aforesaid; and that the value of the importation, where there is no violation of the conditions of this bond, shall not in any way effect the liability in those cases where there shall be a violation hereof.

"Sealed with our seals this twenty-first day of December, one thousand eight hundred and ninety-six.

(Sgd.) "DIECKERHOFF, RAFFLOER & CO., [L. S.]
"By R. ERBSLOH. [L. S.]
(Sgd.) "CARL F. BOKER. [L. S.]
(Sgd.) "JOHN ACHELIS. [L. S.]

"Sealed and delivered in the presence of—
(Sgd.) "W. A. COURSEN."

III. That on or about the 13th day of January, 1897, while the said bond was in full force and effect, the defendants, who composed the
14 firm of Dieckerhoff, Raffloer & Company, imported into the port of New York and there made an entry in writing in the custom-house of seven cases or packages or merchandise, numbered 417 to 421, inclusive, and 983 and 984, imported per steamship "Bovic," January 13, 1897, entry number 7,042, all of which was merchandise liable to be inspected and appraised, and at the time of such entry the collector designated one of the said cases or packages, numbered 418, to be sent to the public store for examination and appraisement; that the

remaining cases or packages were, on or about said last-mentioned date and within six months from the date of said bond, delivered to the said firm of Dieckerhoff, Raffloer & Company from the custody of the officers of the customs of the port of New York in pursuance of section 2899 of the Revised Statutes of the United States and in reliance upon and by reason of the said bond.

IV. That at about the time of said entry the collector of customs did endorse on said bond the estimated value of the whole of said importation and entry, to wit, the sum of $1,522.00, in the manner and form in said bond provided, and the estimated value of package No. 420, more particularly referred to hereinafter, was $185.00, and the estimated value of the invoice containing said package No. 420 was $806.

V. That thereafter and on or about January 18th, 1897, the package of said importation designated by the collector and sent to the public stores to be opened and examined was appraised and reported to the said collector, and within ten days after said last-mentioned package had been so appraised and reported and on or about January 18th, 1897, the collector ordered the defendants, Emil Dieckerhoff, Adolph Erbslob,
15 Rudolph Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, to return to him package No. 420, one of the packages included in the importation aforesaid and delivered as aforesaid to the defendants composing the firm of Dieckerhoff, Raffloer & Company, as aforesaid, in reliance upon and by reason of said bond.

VI. That the said defendants did not within ten days after the said package designated by the collector and sent to the public stores to be opened and examined had been appraised and reported to the collector, delivered to the order of said collector the package of said importation No. 420, demanded by the collector aforesaid, without having been opened except with the consent of the collector or surveyor given in writing, and then in the presence of one of the officers of the customs, and did not return the said package No. 420 at all, but wholly neglected, failed, and refused to return the said package.

VII. And plaintiffs further allege that the defendants have wholly failed, neglected, and refused in lieu of returning said package No. 420 demanded as aforesaid, to pay to the proper collecting officer of the port of New York where said importation was made and entered, double the estimated value of the said package No. 420 which said defendants failed and refused to return as aforesaid, to wit, the sum of $370.00.

All contrary to the obligations of said bond and to the laws of the United States in such case made and provided.

Wherefore, the plaintiffs pray judgment against the said defendants for the sum of $3,044.00 with interest from January 18, 1897.

HENRY L. BURNETT,
Attorney for the United States in and
for the Southern District of New York.

16 SOUTHERN DISTRICT OF NEW YORK, *ss:*

Max J. Kohler, being duly sworn, deposes and says that he is an assistant to the United States attorney for the Southern District of New York and has charge of this action. The foregoing complaint is

true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That the action is brought upon a written instrument (a copy of which is included in and forms a part of said complaint) now in the possession of the collector of the port, as deponent believes.

That the sources of deponent's information and the grounds of his belief are correspondence with, and a copy of said bond furnished by, said collector, and other documents and reports now in his possesion.

MAX J. KOHLER.

Sworn to before me this 26th day of February, 1898.

C. S. HOUGHTON,
Notary Public, N. Y. Co.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States vs. Emil Dieckerhoff et al. Order amending complaint, &c. Wallace Macfarlane, United States attorney, attorney for plaintiff. U. S. Circuit Court. Filed Mar. 1, 1898. John A. Shields, clerk.

17 U. S. Circuit Court, Southern District of New York.

UNITED STATES, PLAINTIFF,
vs.
EMIL DIECKERHOFF ET AL., DEFENTANT.

The defendants above named, by Curie & Smith, their attorneys, answering the complaint of the plaintiff:

I. Deny any knowledge or information sufficient to form a belief as to the first allegation in the fifth paragraph of said complaint, and therefore they deny the same.

II. Deny that by reason of any fact alleged in the complaint the plaintiff suffered damage in the sum of $3,044 or in any other sum or that the plaintiffs have suffered any damage whatever.

Wherefore, defendants pray that the complaint of the plaintiff be dismissed.

CURIE & SMITH,
Attorneys for Defendant, 22 William Street, N. Y. City.

RUDOLPH ERBSLOB.

SOUTHERN DISTRICT OF NEW YORK, *ss*:

Rudolph Erbslob, being duly sworn, deposes and says: That he is one of the defendants herein; that he has read the foregoing answer
18 and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

RUDOLPH ERBSLOB.

Sworn to before me this 4th day of May, 1901.

[SEAL.] J. L. F. PHILGUS,
Notary Public, County of Kings.

Certificate filed County of New York.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States vs. Emil Dieckerhoff et al. Answer. Curie & Smith, attorneys for defendant, 22 William street, N. Y. City. Service of a copy of the within answer is hereby admitted. May 4, 1901. Henry L. Burnett, U. S. atty. for plff. U. S. Circuit Court. Filed May 8, 1901. John A. Shields, clerk.

19 At a stated term of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, held at the United States court rooms in the borough of Manhattan, in the city of New York, on Friday, the 24th day of October, in the year of our Lord one thousand nine hundred and two.

Present: The honorable Alfred C. Coxe, circuit judge.

THE UNITED STATES
vs.
EMIL DIECKERHOFF ET AL.

Now comes the plaintiff by Charles Duane Baker, esq., assistant United States attorney, its attorney, and moves the trial of this cause. Likewise come the defendants by W. Wickham Smith, esq., their attorney. Thereupon a jury is empaneled and the cause proceeds to trial.

After hearing the evidence for the plaintiff and the argument of counsel, the jury, by direction of the court, say they find a verdict for the plaintiff for $369.12, and so say they all.

Stay of 60 days in which to make and serve a case.

An extract from the minutes.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

20 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOH, RUDOLPH ERBSLOH, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Co., and of F. Boker and John Achelis.

The issues of law and fact raised in the above-entitled action by the pleadings therein having come on for trial at a stated term of the United States Circuit Court, held in the said district, in the United States Court and Post-Office Building, in the city of New York, on the 24th day of October, 1902, before Hon. Alfred C. Coxe, C. J., and a jury, and such issues having been duly tried, and a verdict duly rendered therein by the jury as directed by the court, in favor of the plaintiff, in the sum of three hundred and sixty-nine ($369.12) dollars and twelve cents, being the sum of twice the amount of the estimated value of one package of merchandise as alleged in the complaint in the said action and to recover which said action was commenced, and the costs in said action having been duly taxed and adjusted at the sum of thirty 87 100 dollars ($30.87).

Now, on motion of Henry L. Burnett, United States attorney for the

Southern District of New York, attorney for the plaintiff, it is
21 Ordered, adjudged, and decreed, that the United States, the plaintiff above named, do recover the amount of said verdict, viz, three hundred and sixty-nine dollars and twelve cents ($369.12) and the costs and disbursements of this action amounting to thirty 87 100 dollars, making in all the aggregate sum of $399.99 100; and it is

Further ordered, adjudged, and decreed, that the plaintiff have execution therefor.

Dated, New York, April 16, 1903.

JOHN A. SHIELDS,
Clerk U. S. Circuit Court.

Consented to as to form.

CURIE, SMITH & MAXWELL.

(Endorsed.) U. S. Circuit Court, Southern District of New York. United States of America vs. Emil Dieckerhoff et al. Judgment. Henry L. Burnett, United States attorney, attorney for plaintiff. U. S. Circuit Court, Southern District of New York. Filed Apr. 16, 1903. John A. Shields, clerk.

22 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOB, RUDOLPH Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis.

Be it remembered, that on the 23d day of October, 1902, this case was brought on for trial in the United States Circuit Court for the Southern District of New York, before the Hon. Alfred C. Coxe, circuit judge. A jury was duly impaneled and sworn.

John T. Linnen, called as a witness on behalf of the plaintiff, testified as follows:

I am a clerk in the custom-house and have been for a good many years. The paper now produced is an entry of certain goods in the custom-house.

The witness produced entry of merchandise in the name of Dieckerhoff, Raffloer & Company per S. S. "Bovic," January 13, 1897, entry No. 7042. The same was received in evidence and covered seven cases of goods numbered 417, 418, 419, 420, 421, 983, and 984, respectively.

Witness continued:

I see a statement on the back of the entry as to the package that was sent to the appraisers' stores. Two packages were sent numbered
23 respectively 418 and 983, but only one of them belongs on the invoice in the case in controversy. That is 418. In the course of business the other packages numbered on the invoices are turned over to the importer and number 418 was the only one reserved in this case. The invoice shows the value of case 418 to be 20 pounds 9 shillings 5

pence, equivalent to $99.62, and the rate of duty assessed on case 418 was 35 per cent, equivalent to $34.87. The paper I now produce is the invoice covering case No. 418. The invoice was received in evidence. It covered 5 cases of goods, namely, cases 417–421, inclusive. The total value of these 5 cases was 169 pounds 9 shillings, equivalent to $823.62.

Plaintiff then offered in evidence the original bond entitled "Bond for six months, No. 411." The same was received in evidence and is as follows:

"*Bond for six months to cover the delivery of uncertained packages.*

"Know all men by these presents that we, Dieckerhoff, Raffloer & Co., as principals, and John Achelis and Carl F. Boker, as sureties, are held and firmly bound unto the United States of America in the sum of fifty thousand dollars, for the payment whereof to the United States we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents, as witness our hands and seals this twenty-first day of December, eighteen hundred and ninety-six.

"The condition of this obligation is such, that if each and every package or packages of each and every importation made by the said principals at any time within six months from and after the date of these presents, and delivered from the custody of the officers of the
24 customs, in pursuance of section 2899, Revised Statutes of the United States, shall, within ten days after the package or packages designated by the collector and sent to the public store to be opened and examined have been appraised and reported to him, be returned to the order of the collector without having been opened except with the consent of the collector or surveyor, given in writing, and then in the presence of one of the officers of the customs; or if the above bounden obligors shall, in lieu of such return, pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise not so returned, then this obligation is to be void; otherwise, to remain in full force and virtue.

"And the above bounden obligors do for themselves, their heirs, executors, administrators, and assigns, jointly and severally covenant and agree with the United States that the collector of customs aforesaid shall endorse on this bond the estimated value of each importation as made, and the date thereof, and that the penalty of this bond shall be held to be double the value of each importation as made and indorsed as aforesaid; and that the value of the importation where there is no violation of the conditions of this bond, shall not in any way affect the liability in those cases where there shall be a violation thereof.

"Sealed with our seals this twenty-first day of December, one thousand eight hundred and ninety-six.

(Sgd.) "DIECKERHOFF, RAFFLOER & CO., [L. S.]
"By R. ERBSLOH.
(Sgd.) "CARL F. BOKER. [L. S.]
(Sgd.) "JOHN ACHELIS. [L. S.]

"Sealed and delivered in the presence of
(Sgd.) "W. A. COURSEN."

25 The book in which this bond was found was identified by the witness as an original record of the custom-house and bond book, and the bond identified as that of Dieckerhoff & Company, and defendants admitted that Messrs. Dieckerhoff and Erbslob, Boker and Achelis duly executed the bond. Witness continued:

I find on the back of the invoice a request as follows: "Please send case 420 to public stores, dated January 18th, '97."

Defendants admitted that the collector called on the importer for the return of package 420, and that the same was not returned. Witness continued:

I have made an estimate of the value of package 420 from the invoice itself as of the time that the entry was made and the bond executed.

Q. Now, what was the value as you estimated of package 420?

(Objected to on ground that the bond requires that the estimation shall be made by the collector at the time of the entry and endorsed on the bond, and that it can not be made by this witness in court after the suit had been brought upon the bond.

The objection was overruled, and the defendants then and there duly excepted, and the exception was duly noted and allowed.)

A. $184.56.

Witness cross-examined by defendants' counsel.

I find an endorsement on this bond reading as follows: "Vessel 'Bovic,' where from Liverpool, amount $1,522." That is all that I can see. I do not see an endorsement on the bond of the value of this particular case 420. Case 418 was sent to the public stores within a day or two of the entry, presumably at the time of entry. I find an

26 endorsement on the invoice that shows that package 418 was delivered to the importers on February 8, 1897. Plaintiffs then and there rested their case. Defendants offered no evidence. Counsel for plaintiffs conceded that there was no proof in the case that the United States suffered any damage by reason of the failure of the defendants to return package 420, and that there could be no proof, and asked, as matter of law, for the recovery of double the value of package 420, to wit, the sum of $369.12. Counsel for defendants then and there moved for the direction of a verdict for the defendants on the following grounds:

1. That there was no proof whatever in the case of any damage sustained by the plaintiff by reason of the failure of the firm of Dieckerhoff, Raffloer & Company to return these packages, and that in the bond, which is a penal bond, expressly so stipulated in its terms, it provides what the penalty of the bond shall be, and that there can be no recovery in the absence of such proof.

2. That the bond, while it purports to be made under section 2899 of the Revised Statutes, does not conform to the provisions of that section.

3d. That the collector did not endorse upon the bond the estimated value of the package not returned, and that there was no competent legal proof in the case of the value of such package.

The motion was denied, to which ruling and refusal the defendants then and there by their counsel duly excepted, and the exception was duly noted and allowed.

Counsel for the defendants then made a separate motion for the direction of a verdict in favor of the sureties on two grounds:

1st. That there was no proof in the case of any demand by the collector upon the importers for the payment of double the value of
27 the package which was called for and not returned, and that as against sureties such a demand was necessary to entitle the plaintiff to sue.

2d. On the ground that it appeared affirmatively by the proof that at the time the importers failed to return package 420 the collector had in his hands public stores case 418, and that he should have retained said package to satisfy any claim he had against the importers, and that the proof is that he delivered it to them after the commencement of this action.

The motion to direct a verdict in behalf of the sureties was denied, to which ruling and refusal the defendants then and there by their counsel duly excepted, and the exception was duly noted and allowed.

Counsel for the plaintiff then moved for the direction of a verdict for the plaintiff for twice the amount of the estimated value of the package not returned, to wit, for the sum of $369.12. This motion was granted by the court, and a verdict directed in favor of the plaintiff for the sum of $369.12, to which ruling and direction the defendants by their counsel then and there duly excepted, and the exception was duly noted and allowed.

And forasmuch as the matters hereinabove set forth would not otherwise appear of record, the judge before whom the case was tried has settled and signed the foregoing bill of exceptions, and ordered the same to be entered as of the 23d day of October, 1902.

Dated New York, March 31, 1903.

ALFRED C. COXE,
U. S. Circuit Judge in and for the Southern District of New York.

28 It is hereby consented to that the foregoing be signed and filed as the bill of exceptions in this case.

Dated New York, March 31, 1903.

HENRY L. BURNETT,
U. S. Attorney, Attorney for Plaintiff.

CURIE, SMITH & MAXWELL,
Attorneys for Defendants.

(Endorsed:) United States Circuit Court, Southern District of New York. United States of America vs. Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis. Bill of exceptions. Curie, Smith & Maxwell, attorneys for defendants, 22 William street, New York. U. S. Circuit Court, Southern District of New York. Filed Apr. 6, 1903, nunc pro tunc as of Oct. 23, 1902. John A. Shields, clerk.

U. S. Circuit Court of Appeals for the Second Circuit.

EMIL DIECKERHOFF ET AL., PLAINTIFFS IN error,
vs.
THE UNITED STATES, DEFENDANT IN ERROR. } Assignment of errors.

Afterwards, to wit, on the 12th day of October, 1903, before the
29 judges of the said court at the city of New York comes the said plaintiffs in error, by Currie, Smith & Maxwell, their attorneys, and say that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

1st. That a demurrer to the amended complaint herein on the ground that it did not set forth the facts sufficient to constitute a cause of action was denied.

2d. That an order overruling a demurrer to the complaint herein on the ground that it did not set forth facts sufficient to constitute a cause of action was entered.

3d. That evidence was improperly admitted upon the trial of the value of the public store case, as estimated by a witness in court upon the trial, instead of proving the estimation by the collector at the time of the entry and endorsed on the bond.

4th. That a motion by the defendant in error for the direction of a verdict in his favor was granted.

5th. That a motion by the plaintiffs in error for the direction of a verdict in their favor was denied.

6th. That a verdict was directed in favor of the defendant in error for double the value of the package called for by the collector and not returned.

7th. That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiffs in error.

8th. That the said judgment was not given for the said plaintiffs in error against the said defendant in error.

30 And the plaintiffs in error pray that the judgment aforesaid for the errors aforesaid, and other error in the record and the proceedings aforesaid, may be reversed and nulled and altogether held for nothing, and that the said plaintiffs in error may be restored to all things which they have lost by occasion of said judgment, &c.

CURIE, SMITH & MAXWELL,
Attorneys for plaintiffs in error, 22 William street, N. Y. City.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. Emil Dieckerhoff et al., plaintiffs in error, vs. The United States, defendant in error. Assignment of errors. Curie, Smith & Maxwell, attorneys for plaintiffs in error, 22 William street, N. Y. City. U. S. Circuit Court, Southern District of New York. Filed Oct. 12, 1903. John A. Shields, clerk.

United States Circuit Court of Appeals for the Second Circuit.

EMIL DIECKERHOFF ET AL., PLAINTIFF IN ERROR,
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

Now comes freely into court the United States, defendant in
31 error, charged herein, by Henry L. Burnett, United States attorney, its attorney, and says:

That there is no error in the record in the proceedings in said case, or in the giving of the judgment therein, and the United States prays that the said Circuit Court of Appeals, before the justices thereof now here, may proceed to examine the record and proceedings aforesaid as to the matters assigned for error herein, and that the judgment aforesaid, in form as aforesaid given, may be in all things affirmed and the United States be hence dismissed.

Dated New York, October 17, 1903.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant in Error.

(Endorsed:) U. S. Circuit Court of Appeals for the Second Circuit. Emil Dieckerhoff et al., plaintiffs in error, vs. The United States, defts. in error. Joinder in error. Henry L. Burnett, United States attorney, attorney for deft. in error. U. S. Circuit Court, Southern District of New York. Filed Oct. 17, 1903. John A. Shields, clerk.

32 United States Circuit Court, Southern District of New York.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOH, Rudolph Erbsloh, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Co., and of F. Boker and John Achelis, defendants.

Know all men by these presents, that I, William H. Northup, am held and firmly bound unto the above-named United States in the sum of one thousand ($1,000) dollars, to be paid to the United States for the payment of which well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with my seal and dated the 10th day of October, in the year of our Lord one thousand nine hundred and three.

Whereas the above-named defendants have prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit, to reverse the judgment rendered in the above-entitled suit by the judge of the Circuit Court of the United States for the Southern District of New York;

Now therefore, the condition of this obligation is such that
33 if the above-named defendants shall prosecute the appeal to effect and answer all damages and costs, if defendants fail to make

said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Sealed and delivered and taken and acknowledged this 10th day of October, 1903, before me,

WM. H. NORTHRUP. [SEAL.]

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William H. Northrup, being duly sworn, deposes and says that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

WM. H. NORTHRUP.

Sworn to this 10th day of October, 1903, before me.
[SEAL.] JOHN K. MAXWELL, *N. P. Co.*

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States of America, plaintiff, vs. Emil Dieckerhoff, Adolph Erbsloh, Rudolph Erbsloh, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Co., and of F. Boker and John Achelis, defendants. Bond for damages and costs. Curie, Smith & Maxwell attorneys for defendants, 22 William street, New York. Approved as to form and also as to sufficiency of sureties, with reservation, however, to the plaintiff of the right at any time to examine the surety at any time under oath, touching his assets, liabilities, and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. Circuit Court, Southern District of New York. Filed Oct. 12, 1903. John A. Shields, clerk.

34 By the Honorable E. Henry Lacombe, one of the judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

To the United States of America, defendant in error, greeting:

You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the borough of Manhattan in the city of New York, in the district and circuit above named, on the 10th day of November, 1903, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Emil Dieckerhoff et als. are plaintiffs in error, and you are cited to show cause, if any there be, why the judgment in said cause mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 12th day of October, in the year of our Lord one thousand nine hundred and three, and of the Independence of these United States the one hundred and twenty-eighth.

E. HENRY LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

(Endorsed:) United States Circuit Court of Appeals for the Second Circuit. Emil Dieckerhoff, Adolph Erbsloh, Rudolph Erbsloh, and

Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Co., and of F. Baker and John Achelis, plaintiffs in error, vs. United
35 States of America, defendant in error. Citation. Curie, Smith & Maxwell, attys. for plffs. in error, 22 William street, New York City. A copy of the within paper has been this day received at this office, Oct. 16, 1903. Henry L. Burnett, U. S. attorney, N. Y. U. S. Circuit Court, Southern District, New York. Filed Oct. 16, 1903. John A. Shields, clerk.

36 United States Circuit Court, Southern District of New York.

Present: The Hon. E. Henry Lacombe, U. S. Circuit Judge.

UNITED STATES, PLAINTIFF,
vs.
EMIL DIECKERHOFF ET AL., DEFENDANTS.

Upon reading and filing the annexed consent of the United States attorney, the attorney for the plaintiff herein, and on motion of Curie, Smith & Maxwell, attorneys for the defendants herein,

It is hereby ordered, that the record in this cause heretofore certified to the Circuit Court of Appeals for the Second Circuit be amended to include the following proceedings:

First. The demurrer to the amended complaint herein.

Second. The opinion of the Honorable William K. Townsend, U. S. circuit judge, overruling the demurrer herein.

Third. The order entered upon the decision overruling the demurrer.

Dated New York, Dec. 5, 1904.

E. H. LACOMBE,
U. S. Circuit Judge.

37 United States Circuit Court, Southern District of New York.

UNITED STATES, PLAINTIFF,
vs.
EMIL DIECKERHOFF ET AL., DEFENDANTS.

It is hereby consented to that the record heretofore returned to the United States Circuit Court of Appeals for the Second Circuit, in this cause be amended to include the following proceedings:

First. The demurrer to the amended complaint herein.

Second. The opinion of the Honorable William K. Townsend, United States circuit judge, overruling the demurrer herein.

Third. The order entered upon the decision overruling the demurrer.

Dated New York, December 5, 1904.

HENRY L. BURNETT,
U. S. Attorney.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States, plaintiff, vs. Emil Dieckerhoff et al., defendants. Consent and order amending record. U. S. Circuit Court, Southern District of New York. Filed Dec. 5, 1904. John A. Shields, clerk.

38 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
EMIL DIECKERHOFF, ADOLPH ERBSLOH, Rudolph Erbsloh, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and Carl F. Boker and John Achelis.

The defendants above named, by Curie & Smith, their attorneys, demur to the complaint herein upon the ground that the same does not set forth facts sufficient to constitute a cause of action.

Wherefore, defendants demand that the said complaint be dismissed, with costs.

Dated New York, March 19, 1898.

CURIE & SMITH,
Attorneys for Defendants,
No. 46 Exchange Place, N. Y. City.

39 Circuit Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA
agst.
EMIL DIECKERHOFF AND OTHERS.

Townsend, Judge:

The questions herein arise on a demurrer to the complaint in an action at law brought by the United States on a custom-house bond, taken under section 2899 of the Revised Statutes.

The bond is for the sum of fifty thousand ($50,000) dollars. The essential part of the condition is as follows:

"The condition of this obligation is such that if each and every package or packages of each and every importation made by the said principals at any time within six months from and after the date of these presents, and delivered from the custody of the officers of the customs, in pursuance of section 2899, Revised Statutes of the United States, shall, within ten days after the package or packages designated by the collector and sent to the public store to be opened and examined have been appraised and reported to him, be returned to the order of the collector without having been opened, except with the consent of the collector or surveyor given in writing, and then in the presence of one of the officers of the customs; or if the above bounden obligors shall, in lieu of such return, pay to the proper collecting officer of said port double
the estimated value of the package or packages of merchandise
40 not so returned, then this obligation is to be void; otherwise to remain in fullforce and virtue."

The question at issue is stated by the defendant as follows:

"The real question of law to be determined upon this demurrer is whether the amount stipulated in these bonds, given pursuant to section

2899, Revised Statutes, is to be regarded as a penalty to secure the payment of actual damages sustained and proved by the United States, or whether said amount is to be regarded as liquidated damages which the obligors of the bond may be compelled to pay, without proof that the United States has suffered any damage whatever, or as a statutory penalty in the nature of punishment for the violation of a statutory duty."

The complaint alleges that a certain package, No. 420, of the estimated value of $185, was ordered to be returned, and that its return was refused.

That such refusal was a breach of the bond is not disputed.

The defendant claims that only such actual damage as the plaintiff can prove it has suffered can be recovered in this action.

The purpose of the bond is manifestly to prevent packages from being sold or opened, except in the presence of the collector, until the amount of duty to be paid thereon has been finally ascertained. In case fraud in valuation is suspected, any package can be called for and examined.

The plaintiff insists that the intent of the law will be made effective by construing the condition of the bond to mean that, for any package not so returned upon demand, there shall be paid twice its estimated value.

The only actual injury suggested in defendants' brief, for which, on their theory, damages could be awarded, would seem to be the additional expense of proving the contents of the package, caused by its absence.

Loss of duties by reason of fraudulent description of contents
41 of the package could not well be considered as actual damage arising from the refusal to return the goods to the collector for inspection; and, even if they could be so considered, the result would not be satisfactory; for, if the Government should fail to establish the fraud by reason of the absence of the package called for, it could not recover for any such damage.

Defendants say that there can be other evidence as to the contents of the packages than such as is obtained by an inspection of the packages themselves by the collector, and adds:

"The cases containing the goods are only one kind of evidence by which to establish the character of the goods. Many cases will be found in the books where the character of imported merchandise, in suits by the Government for forfeiture or duties, has been established by the testimony of informers and by the testimony of foreign shippers, by documentary evidence, and in many other ways. It may be harder to get this kind of evidence than it would be to open the cases if they could be produced, but this is no reason for giving a harsh and unreasonable construction to a statute seventy years after its enactment."

The object of the bond is to dispense with the necessity of resorting to such evidence.

Defendants throughout maintain that if plaintiff is entitled to recover at all for anything except for actual damage alleged and proved, it must recover twice the value of the whole shipment of which the package formed a part; and that such a penalty would be too severe.

Such is not the proper construction of the bond.

Upon the complaint as it stands, plaintiff, unless further answer is made, is entitled to recover, as liquidated damages, double the estimated

value of the packages called for and not returned; and this is not a harsh or excessive penalty.

42 To sustain the demurrer would violate the plain intent of the statute, and render it practically useless.

The demurrer is overruled.

(Endorsed:) U. S. Circuit Ct., So. Dist. of N. Y. U. S. vs. Emil Dieckerhoff. Opinion. U. S. Circuit Court. Filed Apr. 6, 1900. John A. Shields, clerk.

At a stated term of the Circuit Court of the United States, held in and for the Southern District of New York, at the United States court and post-office building in the city of New York, on the 9th day of April, 1901.

Present: Hon. William K. Townsend, district judge.

THE UNITED STATES
against
EMIL DIECKERHOFF ET AL.

The above-entitled action having been brought on for argument on the issues of law raised by the complaint of the plaintiff and the demurrer of the defendant, and after hearing W. Wickham Smith, esq., of counsel for the defendant, in support of the demurrer, and Henry L. Burnett, esq., United States attorney, of counsel for the plaintiff (Charles D. Baker, esq., assistant United States attorney), in opposition thereto;

Now, on motion of Henry L. Burnett, United States attorney, it is

Ordered, adjudged, and decreed that the said demurrer be, and
43 the same is hereby, overruled, and that the defendant have twenty days in which to answer said complaint.

WM. K. TOWNSEND, *Judge.*

Assented to as to form.

CURRIE & SMITH,
Attorneys for Defts.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States vs. Emil Dieckerhoff et al. Order on demurrer. Henry L. Burnett, United States attorney, attorney for plff. Due service of a copy of the within is hereby admitted. New York, April 9th, 1901. Currie & Smith, attorneys for defts. U. S. Circuit Court. Filed Apr. 10, 1901. John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to eight, inclusive, contain a true and complete transcript of the demurrer, opinion overruling demurrer, and order thereon had in said court, in the cause entitled The United States, plaintiff, against Emil Dieckerhoff et al., defendants, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 7th day of December, in the year of our Lord one thousand nine hundred and four, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

44 United States Circuit Court of Appeals for the Second Circuit.

No. 22. October term, 1904.

Argued December 22, 1904. Decided February 1, 1905.

EMIL DIECKERHOFF ET AL., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace and Lacombe, C. J., and Holt, D. J.

This cause comes here upon writ of error to review a judgment of the Circuit Court, Southern District of New York, in favor of the United States for $369.12 on a customs bond.

Lacombe, circuit judge.

On or about January 13, 1897, the plaintiffs' firm imported seven cases of goods. The collector sent one of these packages (case 418) to the public stores and delivered the remaining cases to the importers. Prior to this importation a bond for the delivery of unexamined packages, commonly known as a six months' bond, had been executed by these importers, with sureties. On or about January 18, 1897, the collector, having received a report from the appraiser, called upon the defendants to send case No. 420 to the public stores, which request was not complied with. Subsequently suit was brought on the bond for $3,044, being double the estimated value of the importation. It was conceded on the trial that there was no proof that the United States suffered any damage by reason of the failure of the importers to return said package No. 420, and that there could be no proof. A clerk from the
45 custom-house testified, against objection and exception, that he had made an estimate of the value of package 420 from the invoice, and that the value thereof was $184.56. The court directed a verdict for double that amount.

Imported merchandise is examined by the customs officers so that it may be properly appraised and classified. In order to facilitate such examination the collector, under authority of statute, usually directs that one package out of every ten in each entry be examined; if the result is satisfactory the others are not opened, or the collector may, for any cause, within ten days after the result of the examination of the package or packages first selected is reported to him order another or as many other packages as he pleases to be also examined. If all the packages comprising each importation were kept in the custody of the Government during this period greater warehouse capacity would be required, and as

far back as 1830 provision was made for a delivery of part of his importation to the importer. That statute is now section 2899, U. S. Revised Statutes, and reads as follows:

"No merchandise liable to be inspected or appraised shall be delivered from the custody of the officers of the customs until the same has been inspected or appraised, or until the packages sent to be inspected or appraised shall be found correctly and fairly invoiced and put up, and so reported to the collector. The collector may, however, at the request of the owner, importer, consignee, or agent, take bonds with approved security, in double the estimated value of such merchandise, conditioned that it shall be delivered to the order of the collector, at any time within ten days after the package sent to the public stores has been appraised and reported to the collector. If in the meantime any package shall be opened, without the consent of the collector or surveyor given in writing, and then in the presence of one of the inspectors of the customs, or if the package is not delivered to the order of the collector, according to the condition of the bond, the bond shall, in either case be forfeited."

46 This statute contemplated a separate special bond for each importation. In practice it has been found convenient to take a general bond running for six months, which is based upon a scheme by which this general bond, by a system of endorsements, authorized to be made and made by the collector of the estimated value of each importation is transferred into a series of separate bonds, with penalties in double the estimated value of each importation, and the statutory conditions stated applicable to each separate entry. Such general six months' bond is authorized by Treasury Regulations, and the propriety of exacting it in place of separate special bonds is not disputed.

The bond sued upon is in the amount of $50,000 and provides:

"The condition of this obligation is such, that if each and every package or packages of each and every importation made by the said principals at any time within six months from and after the date of these presents, and delivered from the custody of the officers of the customs, in pursuance of section 2899, Revised Statutes of the United States, shall, within ten days after the package or packages designated by the collector and sent to the public store to be opened and examined, have been appraised and reported to him, be returned to the order of the collector without having been opened except with the consent of the collector or surveyor, given in writing, and then in the presence of one of the officers of the customs; or if the above-bounded obligors shall, in lieu of such return, pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise not so returned, then this obligation is to be void; otherwise, to remain in full force and virtue.

"And the above-bounded obligors do, for themselves, their heirs, executors, administrators, and assigns, jointly and severally covenant and agree with the United States that the collector of customs aforesaid shall endorse on this bond the estimated value of each importation as

47 made, and the date thereof, and that the penalty of this bond shall be held to be double the value of each importation as made and indorsed as aforesaid; and that the value of the importation, where there

is no violation of the conditions of this bond, shall not in any way affect the liability in those cases where there shall be a violation thereof."

It will be observed that in one respect the bond fails to conform to the statute. In the first paragraph above quoted it is provided that the bond shall be void if the "obligors shall, in lieu of such return, pay to the proper collecting officer of said port double the estimated value of the package or packages of merchandise not so returned." The statute provides that the security shall be in double the value of the merchandise delivered to the importer, and that if "any package" is improperly opened or is not delivered to the order of the collector "the bond shall, in either case, be forfeited." This error in phraseology is corrected, however, in the second paragraph, where the obligors covenant that the penalty of the bond shall be held to be double the value of each importation as made and endorsed. The defendants concede that such is the proper construction of the bond, and that it is a valid bond providing such penalty; and inasmuch as the only bond the collector was authorized to take was one conformable to the statute, the bond in suit is to be considered as if the inconsistent words in its first paragraph were eliminated.

It is elementary law that the penalty named in a bond will be considered as covering, to the extent of the sum named, the damages which the party in whose favor the stipulation is made may have sustained from the breach of contract by the opposite party. It is incumbent upon the party who claims that the penalty is liquidated damages to show that they were so considered by the contracting parties. Tayloe v. Sandford (7 Wheat., 13). Certainly there is nothing on the face of this bond to indicate that the parties agreed that it should be so considered. There
48 is a line of authorities, some of which are cited on the briefs, holding that where the sum named in the bond is a fixed penalty imposed by law as a punishment for a breach of duty enjoined by law, the court will not undertake to alter or refuse the penalty which the legislature has fixed for the non-performance of a statutory duty. It was so held in Clark v. Barnard (108 U. S., 436), where the statute granting authority to extend a line of railroad provided that the railroad company should deposit with the State treasurer "their bond in the sum of $100,000 that they will complete the said road before Jan., 1872." In U. S. v. Pingree (1 Sprague, 339) the bond was for rewarehousing, and the statute expressly provided that if the goods were not rewarehoused the collector should levy and collect the original duty plus an additional duty of 100 per cent. In U. S. v. Oteri (67 F. R., 146) the law required that in cases of withdrawal for export the exporter should give bond, in a penal sum equal to double the amount of the estimated duties, to produce the proof required by law of the landing of the same beyond the limits of the United States. In U. S. v. Hatch (1 Paine, 336) the statute required the master to enter into a bond in the sum of $400 that he shall exhibit a certain certified copy of a list of his crew, and also the crew (except such as may have died, absconded, etc.), to the boarding officer at the first United States port he might reach. In U. S. v. Montell (Taney's Dec., 47) the statute required a bond to be given in an amount which varied with the tonnage of the vessel, conditioned that the certificate of registry of the vessel shall be solely used for the vessel for

which it is granted, and shall not be sold, lent, etc. The court said: "It would be difficult by any course of proof or by any process of reasoning to show that the United States had sustained any particular amount of damages in a case of this description, or to adopt any rule by which the damages could be measured by a jury or be liquidated by agreement between the parties. The sum for which the parties are to become bound is manifestly a penalty or forfeiture, inflicted by
49 the sovereign power for a breach of its laws. It is not a liquidated amount of damages due upon a contract, but a fixed and certain punishment for an offence."

The case here presented is more like that in U. S. v. Cutajar (67 F. R., 530). The object of the bond is to protect the Government in assessment, valuation, and collection of its duties. By inspection of the contents of any package the customs officers ascertain what the goods are and what their value is. They are thus enabled to liquidate the amount of duty in the event of undervaluation to impose excess duties, and in the event of fraud to proceed to forfeit the goods. With the package in their possession it is a very easy matter to ascertain its contents, but such information may be obtained otherwise—the persons who packed it or saw it packed, the persons who unpacked it or who took possession of its contents could show what those contents were. It might be an expensive matter to procure this testimony as to any missing package, but the penalty of the bond is large enough to cover such expenses and all additional duties besides. These are the damages which the Government sustains by reason of the non-return of the package, and in our opinion the bond is conditioned to make good such damages within the limit named in the penalty, double the estimated value of the importation. The argument that great hardship might result from any particular construction of an act of Congress is not usually of much weight, but it may fairly be considered that if the sum named in the bond were held to be liquidated damages an importer might not infrequently be fined $50,000 or $100,000, when his importation was a large one, merely because he had opened a single package worth, may be, $100 in the presence of an inspector, but without the written consent of the collector or surveyor.

The judgment is reversed and cause remanded for a new trial.

W. Wickham Smith, for the plaintiffs in error.

Charles D. Baker, assistant United States attorney, for the defendant in error.

50 United States Circuit Court of Appeals for the Second Circuit.

No. 22.—October term, 1904.

Argued December 22, 1904. Decided February 1, 1905.

EMIL DIECKERHOFF ET AL., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Southern District of New York.

Before Judges Wallace and Lacombe, C. J., and Holt, D. J.

WALLACE, Circuit Judge:

As I do not wholly concur in the opinion of Judge Lacombe, I will briefly state the reasons why I think the judgment should be reversed.

If the bond instead of being a statutory were only a voluntary bond, it is too plain to admit of discussion that the double value would be regarded as a penalty, and the obligors would be liable only for the damages actually sustained by the obligee by a breach of any of the conditions. Bignall v. Gould (119 U. S., 495). Being a statutory bond, however, it is to be treated as imposing upon the obligors the liability contemplated by the statute.

If it is the meaning of section 2899 that the importer shall become liable under his bond for double the value of his entire importation of merchandise in case he fails to redeliver a single package of it to the customs officers for reappraisement within the ten days specified, the judgment below ought to be affirmed upon the ground that it is a more favorable one to the defendants than they were entitled to.

51 I think this is not the meaning of the statute, and that its language does not require such a harsh construction. It permits the collector to estimate the value of all the packages, and requires him to exact a bond from the importer in double the estimated value of the whole number, which is to be so conditioned that it shall be forfeited if within a specified time all those delivered to the importer are not redelivered to the collector, or if any one of them is not redelivered, or if any one of them in the meantime shall have been irregularly opened. The obvious purpose of the bond is to amply protect the Government in the event that none of the packages should be redelivered, or any one of them should not be redelivered, or any one of them should have been opened without the consent of some of the officers of the customs; and the circumstance that the undertaking is to be in double the sum of any conceivable loss is convincing that the sum is in the nature of a penalty and not of liquidated damages.

If the construction contended for by the Government is correct and the bond liquidates the damages recoverable of the importer without any regard to the loss which may accrue to the Government, and makes him liable to the same extent whether a single package is inadvertently opened or the redelivery of all the packages is refused, such a construction is so inequitable that it is impossible to believe it was contemplated by Congress.

The language of the statute is satisfied by regarding the double value as the penalty of the bond and the maximum of the importer's liability. Van Buren v. Digges (52 U. S., 461–476).

If this construction is correct, it follows that the penalty, like that of bonds ordinarily, when the parties do not agree that it shall be construed as liquidated damages, is recoverable only to the extent of the damage accruing upon the breach. It was incumbent upon the Government upon the trial to prove the damages arising from the breach of the conditon. The breach consisted in the refusal or neglect of the importers to rede

liver to the collector one of the packages of their importation.

52 The Government was entitled to the redelivery of that package, and I think its measure of damages for the breach was the value of the package. In other words, the Government was entitled to recover the damages ordinarily recoverable for the breach of a promise to redeliver goods which the promisee has temporarily entrusted to the possession of the promisor.

An estimate of the value of the package from the importers' invoice was competent evidence, and the Government was entitled to a recovery of the value thus shown.

W. Wickham Smith, for the plaintiffs in error.

Charles D. Baker, assistant United States attorney, for the defendant in error.

53 At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the court rooms in the post-office building in the city of New York, on the 14th day of February, one thousand nine hundred and five.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Ci cuit Judges, and Hon. George W. Holt, District Judge.

EMIL DIECKERHOFF ET AL., PLAINTIFFS IN ERROR,
vs.
UNITED STATES, DEFENDANT IN ERROR.

Error to the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said Circuit Court be and it hereby is reversed, and cause remanded with instructions for a new trial.

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.

54 (Endorsed:) United States Circuit Court of Appeals, Second Circuit. Dieckerhoff vs. U. S. Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed February 14, 1905. William Parkin, clerk.

55 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 54, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Emil Dieckerhoff et al., plaintiffs in error, against United States, defendant in error, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York in the Second Circuit, this 3rd day of April, in the year of our Lord one thousand nine hundred and five, and of the Independence of the said United States the one hundred and twenty-ninth.

[SEAL.]

WM. PARKIN, *Clerk.*

56 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States Circuit Court of Appeals for the Second Circuit, greeting:

Being informed that there is now pending before you a suit in which Emil Dieckerhoff, Adolph Erbslob, Rudolph Erbslob, and Ludwig Deuss, composing the firm of Dieckerhoff, Raffloer & Company, and F. Boker and John Achelis are plaintiffs in error and The United States is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
57 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of April, in the year of our Lord one thousand nine hundred and five.

[SEAL.]

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

58 (Indorsed:) File No., 19710. Supreme Court of the United States. No. 610, October term, 1904. The United States vs. Emil Dieckerhoff et al. Writ of certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 27, 1905. William Parkin, clerk.

59 *To the honorable the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel

is hereto annexed and certified as a return to the writ of certiorari issued herein.

New York, April 28th, 1905.

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

60 Supreme Court of the United States, October term, 1904.

THE UNITED STATES, PETITIONER,
vs.
EMIL DIECKERHOFF ET AL. } No. 610.

Stipulation.

It is hereby stipulated by and between counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court shall be taken as the return of the clerk of the Circuit Court of Appeals to the writ of certiorari issued herein.

H. M. HOYT,
Solicitor-General.
W. WICKHAM SMITH,
Counsel for Respondents.

April 26, 1905.

(Indorsed:) U. S. vs. Dieckerhoff. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 27, 1905. William Parkin, clerk.

61 (Indorsed:) United States Circuit Court of Appeals, Second Circuit. United States, petitioner, v. Emil Dieckerhoff et al. Return to certiorari.

62 (Indorsement on cover:) File No., 19710. Supreme Court, U. S., October term, 1904. Term No., 610. United States, petitioner, vs. Emil Dieckerhoff et al. Writ of certiorari and return. Filed May 1, 1905.

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